

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

ROBERTO MARTINEZ,)	
#02067337,)	
Plaintiff,)	
vs.)	No. 3:18-CV-3094-G-BH
)	
JAMES SCOTT SNYDER,)	
Defendant.)	Referred to U.S. Magistrate Judge

FINDINGS, CONCLUSIONS, AND RECOMMENDATION

By *Special Order No. 3-251*, this case has been automatically referred for findings, conclusions and recommendation. Based on the relevant filings and applicable law, the plaintiff's complaint should be **DISMISSED** with prejudice.

I. BACKGROUND

Roberto Martinez (Plaintiff) sues a Carrollton police detective under 42 U.S.C. § 1983 for alleged violation of his civil rights. (*See* doc. 9 at 4.) He claims that after he was arrested on August 13, 2011, the detective first told him that he needed to register as a sex offender, but then told him that he did not need to sign the registration forms. (*Id.* at 6.) Five days later, Plaintiff was arrested again, and the detective said that “we’r[e] gone [sic] register you now.” (*Id.*) On August 31, 2011, Plaintiff was arrested for failure to register as a sex offender and later charged with that offense in Cause No. 14-00302. (*Id.*) He alleges that the detective made misleading statements about the registration procedures under oath, and that he falsely testified at trial that Plaintiff had refused to sign the registration forms. (*Id.* at 4, 6-7.) As a result, he contends that he was wrongfully convicted in Cause No. 14-00302 on September 17, 2014, of failure to register as a sex offender. *See* www.dallascounty.org (search for plaintiff). He alleges that the evidence was insufficient to support the conviction. (*Id.* at 7.) He seeks monetary damages. (*See* doc. 9 at 4.) No process has been issued in this case.

II. PRELIMINARY SCREENING

As a prisoner seeking redress from an officer or employee of a governmental entity, Plaintiff's complaint is subject to preliminary screening under 28 U.S.C. § 1915A. *See Martin v. Scott*, 156 F.3d 578, 579-80 (5th Cir. 1998) (per curiam). Because he is proceeding *in forma pauperis*, his complaint is also subject to screening under § 1915(e)(2). Both § 1915(e)(2)(B) and § 1915A(b) provide for *sua sponte* dismissal of the complaint, or any portion thereof, if the Court finds it is frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary relief against a defendant who is immune from such relief.

A claim is frivolous when it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). A claim lacks an arguable basis in law when it is “based on an indisputably meritless legal theory.” *Id.* at 327. A claim that falls under the rule announced in *Heck v. Humphrey*, 512 U.S. 477 (1994), “is legally frivolous unless the conviction or sentence at issue has been reversed, expunged, invalidated, or otherwise called into question.” *Hamilton v. Lyons*, 74 F.3d 99, 102 (5th Cir. 1996). A claim fails to state a claim upon which relief may be granted when it fails to plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *accord Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

III. SECTION 1983

Plaintiff sues under 42 U.S.C. § 1983. It “provides a federal cause of action for the deprivation, under color of law, of a citizen’s ‘rights, privileges, or immunities secured by the Constitution and laws’ of the United States.” *Livadas v. Bradshaw*, 512 U.S. 107, 132 (1994). It “afford[s] redress for violations of federal statutes, as well as of constitutional norms.” *Id.* To state a claim under § 1983, a plaintiff must allege facts that show (1) he has been deprived of a right secured by the Constitution and the laws of the United States; and (2) the deprivation occurred under

color of state law. *See Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 155 (1978); *Cornish v. Corr. Servs. Corp.*, 402 F.3d 545, 549 (5th Cir. 2005).

A. Habeas Relief

To the extent that Plaintiff's allegation of insufficient evidence to support the conviction may be construed as a claim for habeas relief, such relief is an inappropriate remedy in a § 1983 action. *See Wolff v. McDonnell*, 418 U.S. 539, 554 (1974). A plaintiff cannot challenge the fact or duration of confinement in a § 1983 action. *Clarke v. Stalder*, 154 F.3d 186, 189 (5th Cir. 1998) (citing *Preiser v. Rodriguez*, 411 U.S. 475, 487 (1973)). He may only do so within the exclusive scope of habeas corpus. *See Preiser*, 411 U.S. at 487. Plaintiff may only obtain declaratory or monetary relief in this § 1983 action.

B. Statute of Limitations

Courts “may raise the defense of limitations *sua sponte*.” *Harris v. Hegmann*, 198 F.3d 153, 156 (5th Cir. 1999). “[W]here it is clear from the face of a complaint filed *in forma pauperis* that the claims asserted are barred by the applicable statute of limitations, those claims are properly dismissed” under 28 U.S.C. § 1915(e)(2)(B). *Gartrell v. Gaylor*, 981 F.2d 254, 256 (5th Cir. 1993); *accord*, *Stanley v. Foster*, 464 F.3d 565, 568 (5th Cir. 2006).

Federal courts look to the law of the forum state to determine the length of the statute of limitations applicable in § 1983 cases. *Wallace v. Kato*, 549 U.S. 384, 387 (2007). The general statute of limitations governing personal injuries in the forum state provides the applicable limitations period. *Piotrowski v. City of Houston*, 237 F.3d 567, 576 (5th Cir. 2001). Texas has a two-year statute of limitations for personal injury claims, so Plaintiff had two years from the date his claims accrued to file suit. *Id.*; *accord Hatchet v. Nettles*, 201 F.3d 651, 653 (5th Cir. 2000).

While state law determines the length of the limitations period, federal law determines the

accrual date. *Wallace*, 549 U.S. at 388; *Walker v. Epps*, 550 F.3d 407, 414 (5th Cir. 2008).

Generally, a claim accrues when the plaintiff has “a complete and present cause of action”, or “when the plaintiff can file suit and obtain relief.” *Wallace*, 549 U.S. at 388 (citation and internal quotation marks omitted).

“Under federal law, the [limitations] period begins to run ‘the moment the plaintiff becomes aware that he has suffered an injury or has sufficient information to know that he has been injured.’” A plaintiff’s awareness encompasses two elements: “(1) The existence of the injury; and (2) causation, that is, the connection between the injury and the defendant’s actions.” A plaintiff need not know that she has a legal cause of action; she need know only the facts that would ultimately support a claim. Actual knowledge is not required “if the circumstances would lead a reasonable person to investigate further.”

Piotrowski v. City of Houston, 237 F.3d 567, 576 (5th Cir. 2001) (citations omitted); *Walker*, 550 F.3d at 414. Plaintiff’s cause of action accrued, and the limitations period began to run, when he knew or had reason to know of the injury that is the basis of his action. *Gonzales v. Wyatt*, 157 F.3d 1016, 1020 (5th Cir. 1998).

Here, Plaintiff’s claims relate to events that occurred at the latest on September 17, 2014, when his trial concluded in Cause No. F14-00302. Because Plaintiff filed his complaint more than four years later on October 25, 2018, his claims are barred by the statute of limitations, absent equitable tolling.

The applicable limitations period may be equitably tolled in appropriate circumstances. *See Rotella v. Pederson*, 144 F.3d 892, 897 (5th Cir. 1998). “[W]hen state statutes of limitation are borrowed, state tolling principles are to be the ‘primary guide’ of the federal court. The federal court may disregard the state tolling rule only if it is inconsistent with federal policy.” *See FDIC v. Dawson*, 4 F.3d 1303, 1309 (5th Cir. 1993) (citations omitted). Equitable tolling preserves a plaintiff’s claims where strict application of the statute of limitations would be inequitable. *Lambert v. United States*, 44 F.3d 296, 298 (5th Cir. 1995). However, federal law requires that litigants

diligently pursue their actions before equitable tolling becomes available. *See Coleman v. Johnson*, 184 F.3d 398, 403 (5th Cir. 1999); *Covey v. Arkansas River Co.*, 865 F.2d 660, 662 (5th Cir. 1989) (“equity is not intended for those who sleep on their rights”). Equitable tolling is appropriate in cases where a plaintiff is actively misled by the defendant or is prevented in some extraordinary way from asserting his rights. *See Rashidi v. American President Lines*, 96 F.3d 124, 128 (5th Cir. 1996).

Plaintiff does not allege any basis for equitable tolling. He has not shown that he has diligently pursued his claims, and he has not shown extraordinary circumstances that warrant equitable tolling. A complaint that is barred by the statute of limitations is frivolous and fails to state a claim. *See Pantoja v. Fort Worth Texas Police Dept.*, 543 F. App’x 379, 379-80 (5th Cir. 2013) (affirming district court’s dismissal of time-barred complaint as frivolous and for failure to state a claim).¹

IV. RECOMMENDATION

Plaintiff’s complaint should be dismissed with prejudice as frivolous and for failure to state a cause of action under 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b). Such dismissal will count as a “strike” or “prior occasion” within the meaning 28 U.S.C. § 1915(g).²

¹ Because Plaintiff was convicted, his claims may be barred by *Heck v. Humphrey*, 512 U.S. 477 (1994) (holding that when a successful civil rights action would necessarily imply the invalidity of a plaintiff’s conviction or sentence, the complaint must be dismissed unless the plaintiff demonstrates that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such a determination, or called into question by a federal court’s issuance of a writ of habeas corpus under 28 U.S.C. § 2254). Regardless, because the issues in this case are appropriate for early and final determination, consideration of whether *Heck* bars Plaintiff’s claims is not required. *See Patton v. Jefferson Correctional Ctr.*, 136 F.3d 458, 462 n.6 (5th Cir. 1998) (when an action raises an issue of immunity, the court to the extent it is feasible to do so should determine that issue as early in the proceedings as possible); *Smithback v. Cockrell*, No. 3:01-CV-1658-M, 2002 WL 1268031, at *2 (N.D. Tex. June 3, 2002) (accepting recommendation that “[w]hen a plaintiff seeks relief unavailable under 42 U.S.C. § 1983 or sues individuals or entities who are not proper parties under § 1983, it also seems appropriate to have an early determination of those issues”).

² Section 1915(g), which is commonly known as the “three-strikes” provision, provides:
 In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section, if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

SIGNED this 30th day of January, 2019.


IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE

**INSTRUCTIONS FOR SERVICE AND
NOTICE OF RIGHT TO APPEAL/OBJECT**

A copy of these findings, conclusions and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of these findings, conclusions and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's findings, conclusions and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).


IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE